

FILED US
DISTRICT COURT
WESTERN DISTRICT OF KY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION

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JAMES E. NULL and MILDRED
NULL,

Plaintiffs,

vs.

AMERIQUEST MORTGAGE
COMPANY, et al.,

Defendants.

CASE NO. 3:08-CV-47-H

(Judge John G. Heyburn, II)

DEFENDANT AMERIQUEST
MORTGAGE COMPANY'S ANSWER
TO COMPLAINT

Defendant Amerquest Mortgage Company ("Amerquest"), by and through counsel, and for its Answer to Plaintiffs James E. Null and Mildred Null's (collectively "the Nulls" or "Plaintiffs") Complaint hereby states as follows:

1. Amerquest is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 1 of the Complaint and therefore denies those allegations.
2. Amerquest is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2 of the Complaint and therefore denies those allegations.
3. Amerquest is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 3 of the Complaint and therefore denies those allegations.
4. Amerquest denies the allegations contained in paragraph 4 of the Complaint.
5. Amerquest denies the allegations contained in paragraph 5 of the Complaint.

6. Ameriquest is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 6 of the Complaint and therefore denies those allegations except to the extent that they are ascertainable as a matter of public record.

7. In response to paragraph 7 of the Complaint, Ameriquest admits only the first and third sentence of said paragraph. Ameriquest is without knowledge or information sufficient to form a belief as to the truth of the second sentence of paragraph 7 of the Complaint and therefore denies those allegations.

8. Ameriquest is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 8 of the Complaint and therefore denies those allegations except to the extent they are ascertainable as a matter of public record.

9. Ameriquest is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 9 of the Complaint and therefore denies those allegations except to the extent they are ascertainable as a matter of public record.

10. Ameriquest submits that paragraph 10 of the Complaint contains conclusions of law to which no response is required. To the extent that paragraph 10 is construed to contain allegations of fact, Ameriquest is without knowledge or information sufficient to form a belief as to the truth of those allegations and therefore denies the same.

11. Ameriquest is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 11 of the Complaint and therefore denies those allegations.

12. Ameriquest is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 12 of the Complaint and therefore denies those allegations.

13. Ameriquest is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 13 of the Complaint and therefore denies those allegations.

14. Ameriquest is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 14 of the Complaint and therefore denies those allegations.

15. Ameriquest is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 15 of the Complaint and therefore denies those allegations.

16. Ameriquest is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 16 of the Complaint and therefore denies those allegations.

17. Ameriquest is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 17 of the Complaint and therefore denies those allegations.

18. Ameriquest is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 18 of the Complaint and therefore denies those allegations.

19. Ameriquest is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 19 of the Complaint and therefore denies those allegations.

20. Ameriquest is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 20 of the Complaint and therefore denies those allegations.

21. For its response to paragraph 21 of the Complaint, Ameriquest incorporates by reference its responses to paragraph 1 through 20 of the Complaint.

22. Ameriquest submits that paragraph 22 of the Complaint contains conclusions of law to which no response is required. To the extent that paragraph 22 is construed to contain allegations of fact, Ameriquest is without knowledge or information sufficient to form a belief as to the truth of those allegations and therefore denies the same.

23. Ameriquest denies the allegations contained in paragraph 23 of the Complaint.

24. Ameriquest denies the allegations contained in paragraph 24 of the Complaint.

25. Ameriquest denies the allegations contained in paragraph 25 of the Complaint.

26. Ameriquest denies the allegations contained in paragraph 26 of the Complaint.

27. Ameriquest denies the allegations contained in paragraph 27 of the Complaint.

28. For its response to paragraph 28 of the Complaint, Ameriquest incorporates by reference its responses to paragraphs 1 through 27 of the Complaint.

29. Ameriquest denies the allegations contained in paragraph 29 of the Complaint.

30. Ameriquest denies the allegations contained in paragraph 30 of the Complaint.

31. Ameriquest denies the allegations contained in paragraph 31 of the Complaint.

32. Ameriquest denies the allegations contained in paragraph 32 of the Complaint.

33. Ameriquest denies the allegations contained in paragraph 33 of the Complaint.

34. Ameriquest denies the allegations contained in paragraph 34 of the Complaint.

35. For its response to paragraph 35 of the Complaint, Ameritrust incorporates by reference its responses to paragraphs 1 through 34 of the Complaint.

36. Ameritrust denies the allegations contained in paragraph 36 of the Complaint.

37. Ameritrust denies the allegations contained in paragraph 37 of the Complaint.

38. For its response to paragraph 38 of the Complaint, Ameritrust incorporates by reference its responses to paragraphs 1 through 37 of the Complaint.

39. Plaintiff's Complaint did not contain a paragraph numbered 39.

40. Ameritrust denies the allegations contained in paragraph 40 of the Complaint.

41. Ameritrust denies the allegations contained in paragraph 41 of the Complaint.

42. For its response to paragraph 42 of the Complaint, Ameritrust incorporates by reference its responses to paragraphs 1 through 41 of the Complaint.

43. Ameritrust is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 43 of the Complaint and therefore denies those allegations.

44. Ameritrust is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 44 of the Complaint and therefore denies those allegations.

45. For its response to paragraph 45 of the Complaint, Ameritrust incorporates by reference its responses to paragraphs 1 through 44 of the Complaint.

46. Ameritrust is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 46 of the Complaint and therefore denies those allegations.

47. Ameritrust is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 47 of the Complaint and therefore denies those allegations.

FIRST AFFIRMATIVE DEFENSE

48. Plaintiffs have failed to state a claim against Ameritrust upon which this Court may properly grant relief.

SECOND AFFIRMATIVE DEFENSE

49. Plaintiffs' damages are the direct and/or proximate result of the actions of other persons or entities over whom Ameritrust had no control.

THIRD AFFIRMATIVE DEFENSE

50. Plaintiffs' claims are barred by the doctrines of waiver, laches and estoppel.

FOURTH AFFIRMATIVE DEFENSE

51. Plaintiffs' claims are barred by the Parol Evidence Rule and/or the Statute of Frauds.

FIFTH AFFIRMATIVE DEFENSE

52. Plaintiffs' claims are barred by their own fraud, negligent misrepresentations and/or negligence.

SIXTH AFFIRMATIVE DEFENSE

53. Plaintiffs have failed to mitigate their damages.

SEVENTH AFFIRMATIVE DEFENSE

54. To the extent Plaintiffs make claims against Ameritrust under the Truth in Lending Act, which Ameritrust denies, Ameritrust states that any alleged violation was not intentional and resulted from a bona fide error of Ameritrust's predecessor notwithstanding the maintenance of procedures reasonably adopted to prevent the error, and was not material or was de minimis.

EIGHTH AFFIRMATIVE DEFENSE

55. To the extent that Plaintiffs set forth a viable claim for rescission, which Ameriquest denies, that claim must fail unless Plaintiffs demonstrate the present ability to tender the rescission to Ameriquest.

NINTH AFFIRMATIVE DEFENSE

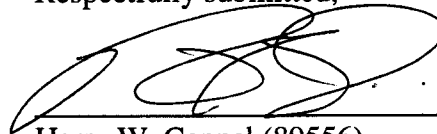
56. Ameriquest reserves the right to plead additional defenses as they become known to it through the course of discovery.

WHEREFORE, Ameriquest prays that Plaintiffs' Complaint be dismissed, with prejudice, at Plaintiffs' costs and for any and all other relief that this Court deems just and proper.

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Respectfully submitted,




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CERTIFICATE OF SERVICE

The undersigned does hereby certify that a true and accurate copy of the foregoing was served via regular U.S. Mail, postage prepaid, and email this 12th day of February, 2008 upon the following:

James K. Murphy
LYNCH, COX, GILMAN & MAHAN, P.S.C.
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Nathan H. Blaske

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